IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

Crl.MC.No. 2907 of 2007()

CRIME NO.425/02 OF HOSDURG POLICE STATION

PETITIONER: 3RD ACCUSED

ABDUL RAHIMAN, S/O. HASSAINAR,
RESIDING AT AJANUR, THEKKEPPURAM, AJANUR VILLAGE,
MANIKKOTH P.O., KASARAGOD DISTRICT.

BY ADV. SRI.T.MADHU

RESPONDENTS: STATE

THE STATION HOUSE OFFICER,
HOSDURG POLICE STATION, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2907 of 2007

Dated this the 18th day of September, 2007

ORDER

The petitioner faces indictment in a prosecution under Section 379 I.P.C. He is the 3rd accused. Investigation is already complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate, it is submitted though the number of the case has not been furnished anywhere in this Crl.M.C. The learned counsel for the petitioner submits that cognizance has already been taken and the learned Magistrate has issued coercive processes against the petitioner as the petitioner did not enter appearance after the learned Magistrate took cognizance. A warrant of arrest issued by the learned Magistrate is chasing the petitioner now.

2. According to the petitioner, he is absolutely innocent. His absence was not wilful or deliberate. No summons or notice was served on the petitioner. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But the petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances it is prayed that appropriate directions may be issued under Sections 438 and/or 482 Cr.P.C.

3. I have considered all the relevant inputs. I am not persuaded to invoke the powers under Section 438 or 482 Cr.P.C.

4. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the

learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-